

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

I.A : CRAN/3/2022, CRAN/4/2022

In

CRR/1466/2020

Mohit Kumar Narsria

Vs

State of West Bengal and Anr.

IA No.: CRAN/1/2021,

CRAN/3/2022, CRAN/4/2022

in

CRR/1727/2020

Neha Khaitan & Ors.

-Vs._

State Of West Bengal & Anr

For the Petitioner	:	Mr. Satadru Lahiri Mr. Vikas Singh Mr. Komal Toshnimel
For the State / opposite party No. 1	:	Mr. Madhusudan Sur Mr. Dipankar Paramanick
For the opposite party No.2	:	Mr. Pawan Kumar Gupta Mr. Bratin Kumar Dey Ms. Sofia Nesar Mr. Santanu Sett Ms. Mahesweta Pramanik
Heard on	:	05.07.2023
Judgment on	:	20.07.2022

Ajoy Kumar Mukherjee, J.

1. Due to Commonality of the issues involved in both the cases being CRR 1727 of 2020 and CRR 1466 of 2020, both the applications are

disposed by this common order. The accused persons being accused no. 1 to 8 filed CRR 1727 of 2020 and the other accused person being accused no.9 separately filed CRR 1466 of 2020 under section 482 of the Code of Criminal Procedure (Cr.P.C) seeking quashing of aforesaid proceeding. Both the Applications, relate to New Town Police Station Case No. 238 of 2019.

2. Petitioners case is that the petitioners, from a notice dated 12.09.2020 under section 41 A of Cr.P.C. came to know that the opposite party no. 2 herein, initiated a criminal proceeding against them at New Town Police Station. From the record of the case it reveals that the First Information Report (FIR) in connection with aforesaid New Town Police Station case, earlier culminated into FRT (investigation closure report). However, said final report regarding closure of investigation dated 31.10.2019 was challenged by filing a Naraji petition, copy of which never served upon the petitioners herein.

3. Petitioners' further contention is that subsequently the court below allowed said Naraji petition without hearing petitioners/accused persons and directed for further investigation of the case under section 173 (8) of Cr.P.C. According to the petitioners said order is illegal per se, since learned Magistrate failed to appreciate that the said final report dated 31st October, 2019 was challenged by the opposite party No.2/defacto complainant on vague grounds that vital witnesses were not examined whereas in the final report dated 31.10.2019 being no. 485 of 2019, it has been clearly mentioned in column 17 that the investigating officer had several time served notice under section 161 and 91 of Cr.P.C. on the opposite party no. 2 herein, but he did not turn up. The court below failed

to appreciate that the complaint was vague and without any particulars or document, evidencing any offence nor any medical document has been disclosed evidencing the occurrence of the alleged offence. In fact the allegations made against the petitioners are false and frivolous. The opposite party no. 2/complainant is the father in law of accused no. 1 Smt. Neha Khaitan and accused no. 2 and 3 are the father and mother of accused no.1/Neha. Accused no. 4 and 5 are brother and sister and accused no. 6 and 7 are uncles of accused no.1/ Neha Khaitan. Accused no. 9 is the married sister of Neha and accused no. 8 is the husband of accused no. 9.

4. The marriage of said Neha took place on 15.07.2014 with Pranab Khaitan, being the son of opposite party no. 2 which was subsequently solemnised on 06.12.2014. Subsequent to the marriage said Neha went to United States of America (USA) with her husband, as her husband was employed in USA. They are blessed with a male child. However, it is alleged that said Neha was being tortured by the opposite party no. 2 and his family members in connection with demand of dowry, since the inception of marriage. Neha tried her level best to live amicably with her husband for the well being of their child. In October, 2018, Neha and her husband along with minor child came to India. Neha stayed at her matrimonial home for some time till 14.05.2019 but as the family members of her husband treated her with cruelty and tortured, her she went to her father's house along with her father at Rourkella, Odissa and other accused persons were not in Kolkata on that date. Most of the petitioners did not visit the residence of opposite party no. 2, which will be evident from the register of visitors maintained at the gate of the complex of the residence of opposite party no.

2. It is also submitted by the petitioners that thereafter several legal proceedings started amongst the parties and Neha filed a complaint under section 498-A, 506/34 of the Indian Penal Code (I.P.C.) read with section 4 of Dowry Prohibition Act, being GR. Case no. 1703 of 2019 against the opposite party no. 2 herein and others. In the said case, police authority upon conducting investigation filed charge-sheet. Neha also initiated Misc. Case No. 238 of 2019 for maintenance of herself and minor son in the court of SDJM, Rourkella, Odissa. Opposite party no. 2 and his wife on the other hand started proceeding under section 12 of the Protection of Women from Domestic Violence Act before Judicial Magistrate, Barasat and petitioners specific case is that the entire fact disclosed in Application under section 12 of the Act of 2005 and the contents of the present FIR are almost similar in nature and for which the present proceeding is bad in law. Opposite party no. 2 herein also started another criminal proceeding under section 500 of the I.P.C. against the accused persons. Several other legal proceedings have been started against petitioner and in fact opposite party is trying to force accused Neha to withdraw the said proceeding initiated under section 498-A of I.P.C.

5. In the aforesaid background the aforesaid New Town Police Station case no. 231 of 2019 dated 25.06.2019 under section 323/ 384/20B of I.P.C. including the order impugned and notice has been assailed on the following grounds:

- (i) That the complaint is false and baseless. This is because complainant in his FIR though stated that huge money has been paid by the opposite party no. 2 and his wife to the

petitioner but neither any amount has been stated nor any particular date or mode of payment has been mentioned nor it has been stated as to whom it was allegedly paid. There is no specific evidence that the security guard of the house ever informed of such alarming situation nor any contemporaneous complaint was filed.

- (ii)** In the said complaint it is stated that the accused persons lastly visited the residence of the opposite party no. 2 on 14.05.2019 but the complaint is filed only on 25.06.2019 i.e. 40 days after the alleged date of last visit.
- (iii)** The entire complain is computer generated print out containing vague and inconsistent allegations however, by an after thought a handwritten sentence has been inserted falsely alleging that the petitioners lastly visited the house of the opposite party no. 2 on 14.05.2019.
- (iv)** The complainant has not provided any medical document which shows that any such cause of action had ever arisen and if there would have been any injury by weapon as stated that should have been mentioned in the complaint as the FIR was lodged long after the date of alleged occurrence. Though opposite party no. 2 in the FIR stated that on an unspecified day the accused persons visited the house of the opposite party no.2 with blunt weapon and also with pistol and on another unspecified day, they tied opposite party no. 2 with a rope and threatened to kidnap but no contemporaneous complain was

lodged by him and has not been mentioned as to which accused person had tied him with a rope. In fact no particular of the act alleged committed by each accused person or role played by them in committing that offence has been stated in the FIR.

- (v)** It is improbable that all the accused person from Ranchi to Rourkella came together to Kolkata and frequently visited the residence of opposite party no. 2 in Kolkata.
- (vi)** The petitioner and other accused persons were in fact not in Kolkata, on the date of alleged occurrence which clearly indicates that the accused persons never visited the residence of the opposite party no.2 on the date as alleged.
- (vii)** The wife of the opposite party no. 2 initiated proceeding under section 12 of the protection of Women from Domestic Violence Act making similar allegation which shows that the present proceeding is a mode of harassment to the petitioners/ accused persons and they are trying to harass them, as non-bailable warrant of arrest has been issued by the court against complainant's son. Accordingly petitioner has prayed for quashing of the said proceeding and also notice sent under section 41-A of Cr.P.C. dated 12.09.2020.

6. In addition to that the petitioner contended that the essentials of the offence under 323 or 384 are clearly absent in the present case. Even if the FIR maker's story is accepted to be gospel truth then also the allegations are so vague without any particulars and placement of facts which singularly lacks either of the ingredients of the offence alleged. He further contended

that even for the sake of argument if the present allegation attracts section 323 of the I.P.C. then also the present proceeding cannot continue, since offence under section 323 is a non-cognizable offence. In this context he relied upon the judgment reported in *Tilak Nagar Industries Ltd & ors. Vs. State of Andhra Pradesh & Anr. (2011) 15 SCC 571.*

7. Learned counsel appearing on behalf of the state placed the case diary and pointed out two statements recorded earlier during investigation and contended that due to pendency of the present application, the investigation could not proceed further.

8. Mr. Gupta learned counsel appearing on behalf of opposite party no.2 submits that investigation is at a budding stage. The documents which contains threatening E-mails sent by accused Neha to her husband on 17.04.2019 and 02.05.2019, whereby she has threatened to destroy the entire family of opposite party no. 2, if her father's command is not obeyed and if his demand for money is not fulfilled, could not be seized by police as yet. He further alleged when their demand was not fulfilled, the petitioner followed through on their threat and attacked the petitioners family at their house a few days later and looted their belongings. He further contended that the violence extortion and robbery inflicted by the petitioners on the family of the opposite party no. 2 gave rise to the present proceeding. He contended that pursuant to such threatening mails, the wife and the opposite party no. 2 were also threatened by the petitioners at their residence, for which the wife of the opposite party no. 2 lodged G.D. entry being no. 827 of 2019 dated 14.04.2019 before the New Town Police commissionerate. His further allegation is due to undue influence and also due to pendency of

this application, the investigating officer is not doing anything and is sitting tight over the matter. Police earlier filed FRT and against which the complainant filed Naraji petition and court below after considering all aspects of the matter and that vital witness were not examined, ordered for further investigation. He further contended that the petitioner have taken false plea that they have not visited the place of occurrence and that their only residence is at Odissa but infact the petitioners and their family members are having their house in Kolkata since 2012 and they are regular residents in the state of West Bengal. Moreover the petitioners are also doing their business in Kolkata as can be easily seen by their company data pulled from the Government of India website. They have suppressed the same and had only shown their address at Rourkella, Odissa. Accordingly the opposite party prayed for dismissal of the present application.

9. I have heard all the parties and considered submissions made by them.

10. Record reveals that earlier police submitted final report regarding closure of investigation on the ground that the complainant and his witness are not co-operating with the investigating agency. Learned court below convinced that said report was filed without examining the vital witnesses and as such he has order for further investigation. It is also apparent that in terms of the said order of Magistrate, further investigation just started. Learned counsel for the petitioner vehemently argued that though at this stage, court is only supposed to look into the contents of the FIR to ascertain whether it discloses any cognizable offence or not but even if the contents of present complaint is to be taken as gospel truth, even then it

does not attract section 384 of the I.P.C. which is the only non-cognizable offence as registered in the FIR in connection with the said case.

11. On perusal of the written complain dated 25.06.2019 it appears that along with other allegations, the complainant also stated in the FIR that they were wrongfully confined and they were tied with rope and the accused persons forcefully trespassed at their house and extort money from the complainant and his wife and they are apprehending that may be killed by the said persons. In the celebrated judgment of **State Of Haryana And Ors vs Bhajan Lal And Ors** reported in **AIR 1992 SC 604**, regarding exercise of inherent power under section 482 of Cr.P.C., Apex Court laid down the following category of instances where in inherent power of the court can be exercised in order to secure the ends of justice these are

“(1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(3) where the uncontroverted allegations made in the FIR or ‘complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

12. It is no more *res intigra* that exercise of power under section 482 of the Cr.P.C. to quash criminal proceeding arises only when an allegation made in the FIR does not constitute ingredients of cognizable offence. It is trite law that at this stage the High Court would be entitled only to examine the allegations made in the FIR and would not be entitled and cannot embark appreciation of evidence. Accordingly if a prima facie case is made out disclosing ingredients of the offence, alleged against the accused persons the court cannot quash the criminal proceeding. In the present case as mentioned above that in the FIR, the complainant has referred certain criminal offences against the petitioner which are cognizable in nature. The investigation is also at a budding stage and as such by no means the court would be justified in quashing the FIR where learned Magistrate being convinced on the submissions of the complainant and materials placed before him, had directed for further investigation. In fact section put by police in formal FIR cannot be decisive to come to a conclusion, whether FIR discloses cognizable offence or not. The settled principle is “fact constitutes offence.” If that be so facts narrated by FIR maker in the FIR sufficiently discloses cognizable offence which needs to be investigated. The inherent power of the High court should not be exercised to stifle a legitimate prosecution. In ***Renu Kumari Vs. Sanjay Kumar and others*** reported in **(2008) 12 SCC 346** the Apex Court has cautioned the High Court and Paragraph 11 runs as follows:-

11. As noted above, the powers possessed by the High Court under Section 482 Cr.P.C. are very wide and the very plenitude of the power requires great caution in its exercise. The court must be careful to see that its decision, in exercise of this power, is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a *prima facie* decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. When an information is lodged at the police station and an offence is registered, then the *mala fides* of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in the court which decides the fate of the accused person. The allegations of *mala fides* against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings. [See *Dhanalakshmi v. R. Prasanna Kumar* (1990 Supp SCC 686), *State of Bihar v. P.P. Sharma* (1992 Supp (1) SCC 222), *Rupan Deol Bajaj v. Kanwar Pal Singh Gill* (1995(6) SCC 194), *State of Kerala v. O.C. Kuttan* (1999(2) SCC 651), *State of U.P. v. O.P. Sharma* (1996 (7) SCC 705), *Rashmi Kumar v. Mahesh Kumar Bhada* (1997 (2) SCC Renu Kumari vs Sanjay Kumar & Ors on 3 March, 2008), *Satvinder Kaur v. State (Govt. of NCT of Delhi)* (1999 (8) SCC 728) and *Rajesh Bajaj v. State NCT of Delhi* (1999 (3) SCC 259)]. The above position was again reiterated in *State of Karnataka v. M.Devendrappa* (2002(3) SCC 89), *State of M.P. v. Awadh Kishore Gupta* (2004(2) SCC 691) and *State of Orissa v. Saroj Kr. Sahoo* (2005(13) SCC 540).

13. Another significant caution given to the courts is that at this stage court cannot examine the evidence and materials on record to determine whether there are sufficient grounds on the basis of which the case would end in a conviction. The court primarily is concerned with the contents of the FIR as a whole and whether such contents constitutes cognizable offence or not and if it is so, it cannot be said that the continuance of the investigation would be mere abuse of process of court. Court should be inclined to permit continuance of prosecution, rather than its quashing at the earliest stage of the investigation, merely on the ground that some external materials have been pointed out to the court. FIR is not an

encyclopaedia and every minutes details of occurrence are not supposed to have appeared in the FIR, in the absence of which the court will jump to a conclusion on the basis of section put by police on formal FIR that no cognizable offence has been made out in the present context in terms of contents of F.I.R. In view of a acrimonious relationship between the parties, it is too early to hold that allegations are absurd or inherently improbable against continuance of further investigation. Furthermore, even if assuming that complainant has laid complaint only on account of personal animosity, that also required to be tested and weighed after materials are collected by way of investigation but that by itself cannot be a ground for quashing the proceeding at the initial stage of investigation.

14. Having considered the contents of FIR and the background of the case and by taking the allegation made in the FIR at their face value, I am unable to pursue myself to held that the contents of FIR do not disclose any cognizable offence. At this initial stage of investigation, it can hardly be said that continuance of the investigation of the instant case would be an abuse of process of court and as such this is not a fit case where FIR should be quashed by invoking inherent power under section 482 of Cr.P.C.

15. In view of above both CRR 1466 of 2020 and CRR 1727 of 2020 are dismissed.

16. Connected applications if any stands disposed of. Interim order if any stands vacated.

There will be no order as to costs.

Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(AJAY KUMAR MUKHERJEE, J.)